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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Single Bench : Hon'ble Shri Justice Satish K. Agnihotri

WRIT PETITION (C) NO. 2043 OF 2007

Petitioner

Inder Sai, Son of Shri Faula Ram, aged about 40 years, Sarpanch, Village Panchayat Khairbar, Japand Panchayat Ambikapur, District Surguja (CG).

Versus

Respondents

1. State of Chhattisgarh, through the Secretary, Department of Panchayat and Social Welfare, D.K.S. Bhawan, Raipur (CG).
2. The Sub Divisional Officer (Revenue) (Prescribed Authority) Ambikapur, District Surguja (CG).
3. The Chief Executive Officer, Janpad Panchayat, Ambikapur, District Surguja (CG).
4. The Returning Officer, Block Education Officer, Ambikapur, District Surguja (CG).
5. The Panchayat and Social Education Organisor, Janpad Panchayat Ambikapur, District Sarguja (CG).
6. Dharam Sai, Son of Shri Heera Sai.
7. Mohan Kerketta, Son of Shri Manglu.
8. Amos Lakda, Son of Shri Vinod Lakda.
9. Rajind, Son of Shri Munjoa Uraon.
10. Ramdayal, Son of Not Known.
11. Kiloman Toppo, Son of Not Known.

12. Rajkumar Minj, Son of Shri Mahadev.

The respondents No.6 to 12 are residents of village Khairbar, Janpad Panchayat Ambikapur, District Surguja (CG).

Present :- Shri V.K. Pandey, counsel for the petitioner.
Shri Utkarsh Verma, Dy. Govt. Advocate for the State.

ORDER
(Passed on 4th April, 2007)

By this petition filed under Article 226/227 of the Constitution of India, the petitioner impugns the validity and legality of the order dated 5-3-2007 (Annexure-P/1) passed by the Sub Divisional Officer, Ambikapur, District Sarguja, in case No.46/A-89/2004-05.

2) The petitioner was elected on the post of Sarpanch of village panchayat Khairbar, Janpad Panchayat Ambikapur, District Sarguja in the election held on 23-1-2005. The respondent No.6 was also one of the candidates in the election on the post of Sarpanch.

3) The respondent No.6 being aggrieved, filed an election petition under the provisions of Section 122 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 before the Sub Divisional officer, Ambikapur, District Sarguja (CG), on the ground that the petitioner was disqualified to contest the election of Sarpanch as in his preceding term as Sarpanch of Gram Panchayat Khairbar, the petitioner has taken advance from the Gram Panchayat for executing several works. The balance of Rs.40,000/- was still payable and on account of the non-payment of the balance amount of Rs.40,000/- before election date i.e. 23-1-2005, the petitioner was disqualified to contest the election of Sarpanch. After hearing all the parties, the Sub Divisional Officer held that the petitioner was still having a

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dues of Rs.40,000/- payable to Panchayat and made a wrong declaration in the form that there was no dues pending against him. On that ground vide impugned order dated 5-3-2007 passed in appeal revenue case No.46/A-89/2004-05 (Annexure-P/1), the election of the petitioner on the post of Sarpanch was declared as void and he was removed from the post of Sarpanch.

4) Being aggrieved, the petitioner has filed this petition impugning the order dated 5-3-2007 and submits that he has deposited a sum of Rs.40,000/- on 4-4-2005, thus, the petitioner was not disqualified. When the impugned order was passed, admittedly the petitioner had pending dues of Rs.40,000/- on or before the date of election i.e. 23-1-2005, which attracts disqualification under the provisions of Chhattisgarh Panchayat Raj Adhiniyam. The petitioner after having accepted the dues, deposited the amount on 4-4-2005 and challenges the impugned order on the ground that no proper enquiry was held before declaring the petitioner as disqualified in the election appeal.

5) I have heard learned counsel for the petitioner, perused the pleadings and documents appended thereto. It is an admitted case of pending dues of Rs.40,000/- before the date of election i.e. 23-1-2005. Therefore, issue of notice to hold enquiry would be an empty formality.

6) In the case of **Viveka Nand Sethi vs. Chairman, J & K Bank Ltd. and others**[1] the Hon'ble Supreme Court held as under :

> "22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. [See *Gurjeewan Garewal (Dr.) v. Dr. Sumitra Dash*]. The principles of natural

[1] (2005) 5 SCC 337

justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. [See *State of Punjab vs. Jagir Singh* and *Karantaka SRTC vs. S.G. Kotturappa*]."

7) In view of the foregoing, the impugned order is unexceptionable and needs no interference. Accordingly, the petition is liable to dismissed and it is hereby dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Gowri